

**BEFORE THE DEBTS RECOVERY  
APPELLATE TRIBUNAL, AT: MUMBAI**

**Present: Mr. Justice Ashok Menon, Chairperson**

**I.A. No. 420/2023 (Stay)**

**In**

**Appeal No. 45/2023**

**Between**

Daljit Singh Tirath Singh Gurudatta & Anr. ... Appellant/s  
V/s.

Kalpna Udaykant Surana & Ors. ... Respondent/s

Mr. Vishal S. Tambe, i/b Mr. Vijay Chandavale, Advocate for Appellants.

Mr. Rajesh Naogri along with Mr. Vinay Deshpande, i/b M/s. V. Deshpande & Co., Advocate for Respondents.

**:- Order dated: 26/06/2023:-**

The matter is taken up for hearing by way of Praecipe filed by the Appellants for seeking urgent relief.

The Appellants who claimed to be neither the borrowers nor the mortgagers or the guarantors with respect to the secured assets proceeded against the 4<sup>th</sup> Respondent Financial Bank filed Securitization Application (S.A.) No. 23/2021 before the Debts Recovery Tribunal, Pune (D.R.T.) seeking reliefs against the security measures u/s 17 (1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“the SARFAESI Act”, for short).

2. Vide order dated 21.04.2023 the Ld. Presiding Officer dismissed the S.A. holding that the Appellants are not entitled to any relief to protect their possession of the property on the basis of an

agreement to sale.

3. The Appellants are aggrieved by the impugned order and are in Appeal challenging it before this Tribunal. The Appellants have also filed I.A. No. 420/2023 for a stay of the application of the impugned order and to prevent further Sarfaesi measures against the secured assets.

4. One of the main contentions taken by the Appellants is that the original loan was granted to the debtors namely Respondent Nos. 1 to 3 by the 5<sup>th</sup> Respondent when the 5<sup>th</sup> Respondent was not notified financial institution which could proceed to take Sarfaesi measures against the debtors. Subsequently, the debt was transferred to the 4<sup>th</sup> Respondent the Kotak Mahindra Bank Ltd., which was a notified institution that proceeded to recover the debt under the provision of the SARFAESI Act.

5. The Appellants claim that they are bonafide purchasers of the property from Respondent Nos. 1 to 3 under an agreement to sale. Admittedly the sale deed has not been registered and the sale has not been accomplished. The Appellants have admittedly moved the civil court with the civil suit for specific performance of a contract to get the sale deed registered.

6. The property which is the subject matter of this Appeal was mortgaged by Respondent Nos. 1 to 3 in favour of Respondent No.5. The contentions of the Appellants are that the sale of the debt by an institution which does not come within the purview of the SARAFESI Act does not entitle the assignee of the debt to invoke the provision of the SARFAESI Act. The notification with regards to the 4<sup>th</sup> Respondent also had come later but subsequent to the

creation of the debt.

7. The Ld. Counsel for the Appellants rely upon a decision of the Hon'ble High Court of Bombay in *Kotak Mahindra Bank Ltd V/s Trupti Sanjay Mehta & Ors AIR 2016 BOM 123*, wherein it was held that a subsequent assignee of the debt cannot invoke the provision of the SARAFESI Act where the assignor at the time of lending was not an institution coming within the purview of the SARFAESI Act. The Kotak Mahindra Bank Ltd preferred in Appeal before the Hon'ble Supreme Court of India and a stay was obtained to the operation of the said decision of the Hon'ble High Court. It is submitted by the Ld. Counsel appearing for Respondent Bank submits that the decision does not apply to all the cases with similar facts and more over the Hon'ble Supreme Court of India is yet to dispose of said Appeal finally.

8. The Ld. Counsel appearing for Respondents submits the question which has been raised by the Appellants has been dealt with by the Hon'ble Supreme Court of India in a subsequent decision reported in *MD Frozen Foods Export Pvt. Ltd. & Ors V/s Hero Fincorp Ltd.(2017) 16 SSC 741* wherein it was held that subsequent assignee would also get the benefit of the SARFAESI Act as regards a prior debt entered into by an institution which did not come within the purview of the SARFAESI Act.

9. The Hon'ble High Court of Bombay had subsequently in Writ Petition No. 11371/2014 considered this very aspect and relied upon the decisions of *MD Froze Foods* and *India bulls Housing Finance Ltd.(Supra)* held that the assignee would be entitled to proceed under the provision of the SARFAESI Act irrespective of whether the

assignor was the Financial Institution at the material time of creating the debt. It has also been observed that the decision in *Kotak Mahindra Bank Ltd* has been impliedly overruled by the Hon'ble Supreme Court of India. The Ld. Presiding Officer has also in the impugned order observed that the decision relied upon by the Appellants has been impliedly overruled.

10. Under the circumstances, I find that no merits in the case of the Appellants at least prima facie. The other contentions raised would only be considered while hearing the Appeal. For the interregnum, I am not enthused with the submission made by the Ld. Counsel appearing for the Appellants to grant interlocutory order of stay of the impugned judgment. Hence, I.A. No. 420/2022 stands dismissed.

Reply to the main Appeal shall be filed expeditiously.

Post on 27.09.2023 for hearing.

Sd/-  
Chairperson

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